

CHAPTER 21
REGULATIONS TO GOVERN THE CERTIFICATION OF SMALL, WOMEN-, AND
MINORITY-OWNED BUSINESSES

Part I
General Information

7VAC10-21-10. Purpose.

The purposes of this Chapter are (i) to establish minimum requirements for the certification of small, women- and minority-owned businesses pursuant to Chapter 14 (§2.2-1400 et seq.) of Title 2.2 of the Code of Virginia and (ii) to provide a process for evaluating local, state, private sector, and federal certification programs that meet those requirements.

The Director of the department shall have final authority on all matters pertaining to the maintenance and administration of certification programs and compliance therewith, except as provided in the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

7VAC10-21-20. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context requires a different meaning:

"Affiliate" means a person effectively controlled by another person or under common control with a third person, including a branch, division, or subsidiary of a business, or under the Investment Company Act (15 USCA Section 8a-2), a company in which there is ownership (direct or indirect) of five percent (5%) or more of the voting stock.

"Agent" means a person who 1) has the authority to act on behalf of a Principal in transactions with third parties; 2) is subject to the Principal's control; and 3) does not have title to the Principal's property.

"Appeal" means a written request by an applicant to reconsider a denial or revocation of certification.

"Applicant" means any business that applies to the department for certification or recertification as a small, women- or minority-owned business.

"Application" means the documents the department requires the applicant to submit in the course of certification or recertification, including the application form the applicant submits under penalty of perjury, which may include any additional documentation that the department requests that the applicant submit, and any information or report that the department generates during or upon completion of an on-site visit.

"Broker" means a person, who acts as an intermediary between a buyer and seller.

"Business" means any legal entity, organized in the United States, or a commonwealth or territory of the United States that regularly engages in lawful commercial transactions for profit.

"Certification" means the process by which a business is determined to be a small, women- or minority-owned business for the purpose of reporting small, women-owned and minority-owned business participation in state contracts and purchases pursuant to §§2.2-1404 and 2.2.-1405 of the Code of Virginia.

"Certified" means the status accorded to an applicant upon the department's determination that the applicant has satisfied the requirements for certification as a small, women- or minority-owned business.

"Control" means the power to direct the operation and management of a business as evidenced through governance documents and actual day-to-day operation.

"Corporation" means a legal entity that is incorporated under the law of a state, the United States, or a commonwealth or territory of the United States.

"Day" means any day except Saturday, Sunday, and legal state holidays unless otherwise noted.

"Dealer" means a person or business that has the exclusive or non-exclusive authority to sell specified goods or services on behalf of another business.

"Department" means the Department of Minority Business Enterprise.

"Director" means the Director of the Department of Minority Business Enterprise or his/her designee.

"Expiration" means the date on which the Director specifies that a certified business will cease to be certified.

"Franchise" means a contractual arrangement characterized by the authorization granted to someone to sell or distribute a company's goods or services in a certain area.

"Franchisee" means a business or group of businesses established or operated under a franchise agreement.

"Individual" means a natural person.

"Industry standard or standard in the industry" means the usual and customary practices in the delivery of products or services within a particular business sector.

"Joint venture" means a formal association of two (2) or more persons or businesses for the purpose of carrying out a time-limited, single business enterprise for profit, in which the associated persons or businesses combine their property, capital, efforts, skills or knowledge, and in which the associated persons or businesses exercise control and management and share in profits and losses in proportion to their contribution to the business enterprise.

"Limited liability company" means a specific type of legal entity that is in compliance with the applicable requirements of the law of its state of formation.

"Manufacturer's representative" means an agent whose Principal is a manufacturer or group of manufacturers.

"Minority individual(s)" means an individual(s) who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

"African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

"Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, Sri Lanka and who is regarded as such by the community of which this person claims to be part.

"Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be part.

"Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be part or who is recognized by a tribal organization.

"On-site visit" means a visit by department representatives to the applicant's physical place(s) of business to verify the applicant's representations submitted to the department in the course of certification or recertification.

"Ownership" means an equity, partnership or membership interest in a business.

"Person" means a natural person or a business.

"Principal" means a person who contracts with another to act on the Principal's behalf subject to the Principal's control.

"Principal place of business" means the physical business location where natural persons who manage the business's day-to-day operations spend most working hours.

"Partnership" means an association of two or more persons to carry on, as co-owners, a business for profit.

"Recertification" means the process by which a business applies to the department for renewed or continued status as a certified business.

"Record" means the materials submitted in support of an application for certification or recertification, which may include the application, supporting documentation, and additional materials obtained by the department in the course of the application, certification, or recertification process.

"Sole proprietorship" means a business the assets of which are wholly owned by a single natural person.

"Virginia-based business" means a business that is organized in and has its principal place of business in Virginia.

7VAC10-21-30. Confidentiality.

The department shall take necessary steps to ensure the confidentiality of documents submitted in support of an application for certification that are not public records within

the definition of the Freedom of Information Act, §2.2-3700 et seq. of the Code of Virginia.

Any financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or trade secrets as defined in the Uniform Trade Secrets Act (§59.1-336 et seq. of the Code of Virginia), provided to the department as part of any application for certification or recertification as a small, women-, or minority-owned business shall be excluded from the provisions of the Freedom of Information Act pursuant to §2.2-3705.6 of the Code of Virginia, but may be disclosed by the department in its discretion where such disclosure is not prohibited by law.

In order for such financial records or trade secrets to be excluded from the Freedom of Information Act, the business shall: (a) invoke such exclusion upon submission of data or other materials for which protection from disclosure is sought; (b) identify the data or other materials for which protection is sought; and (c) state the reason why protection is necessary.

7VAC10-21-40. False or misleading information.

Any applicant that knowingly provides false or misleading information on its application for certification or recertification or in its supporting documentation shall be denied certification and shall not be permitted to reapply for certification.

In addition, the applicant may be referred to the Commonwealth's Attorney for the City of Richmond for possible criminal prosecution for a misdemeanor or a felony under §18.2-213.1 or 18.2-498.3 Code of Virginia.

Part II

Minimum Eligibility Standards

7VAC10-21-100. Eligible Small Business.

A business may be certified as a small business if:

1. It is at least 51% owned by one or more individuals who are U.S. citizens or non-citizens in full compliance with U.S. immigration law; or
2. In the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by individuals who are U.S. citizens or non-citizens in full compliance with U.S. immigration law; and
3. One or more of the individual owners control both the management and daily business operations; and
4. It is operated independent from control by any other business; and
5. Together with its affiliates, it has 250 or fewer employees, or average gross receipts of \$10 million or less averaged over the previous three years.

7VAC10-21-110. Eligible Women-owned Business.

A business may be certified as a women-owned business if:

1. It is at least 51% owned by one or more women who are U.S. citizens or non-citizens in full compliance with U.S. immigration law; or
2. In the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or non-citizens in full compliance with U.S. immigration law; and
3. One or more of the women owners control both the management and daily business operations.

7VAC10-21-120. Eligible Minority-owned Business.

A. A business may be certified as a minority-owned business if:

1. It is at least 51% owned by one or more minority individuals who are U.S. citizens or non-citizens in full compliance with U.S. immigration law; or
2. In the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership or limited liability company or entity is owned by one or more minority individuals; and
3. One or more of the minority owners controls both the management and daily business operations; and
4. The minority owner(s) is regarded as such by the community of which the person claims to be a part.

B. Being born in a country does not, by itself, define an individual as a minority individual pursuant to §2.2-1401 of the Code of Virginia. In making the determination whether a person is a minority individual, the department may be required to determine whether the person is "regarded as" a minority individual by "the community of which he or she claims to be a part." In making this determination, the department may consider whether:

1. The person regularly describes himself or herself, in printed materials and orally, as a member of the community;
2. Whether the person historically has held himself or herself out as a member of the community;
3. Whether the individual is a member of and actively participates in business, educational, charitable, civic or community organizations or activities made up of or traditionally identified with or attended by members of the community; and
4. Whether other members of the community describe the person as a fellow member of the community.

C. The department may request such additional information, as it may reasonably need to support an individual's claim that he or she is a minority Individual. In

determining whether a minority individual is regarded as such by the community, the department shall consider all the facts in the record, viewed as a whole.

7VAC10-21-130. Eligible Out of State Business Enterprise.

The department may certify a non-Virginia based business if:

1. It meets the applicable eligibility standards for certification as a small, women- or minority-owned business; and
2. The state in which the business is incorporated or has its principal place of business does not deny a like certification to a Virginia-based small, women- or minority-owned business or provide a preference to small, women- or minority-owned firms that is not available to Virginia-based businesses.

Part III

Determination of Independent Operation, Ownership and Control of Small, Women- and Minority-Owned Businesses

7VAC10-21-200. General Provisions.

In determining ownership and control, the department will consider all the facts in the record, viewed as a whole, as they appear at the time of the application.

An eligible applicant will not be refused certification based solely on historical information indicating a lack of 51% ownership or control of the applicant by individuals in the case of a small business or by a woman or women or by a minority individual or individuals at some time in the past, if the applicant meets the ownership and control standards at the time of application. A business will not be certified, however, if it appears from the record that the business was organized or its ownership structure or control changed for the purpose of qualifying for certification as a small, women- or minority-owned business.

An eligible applicant will not be refused certification solely on the basis that it is a newly formed business.

7VAC10-21-210. Ownership.

A. The ownership by women or minority or individual owners (in the case of a small business) must be real, substantial and continuing going beyond the pro-forma ownership of the business.

B. Records of the applicant's business arrangements must demonstrate that the women, minority or individual owners that the applicant claims to have ownership interests in the applicant's business share in all risks and profits in proportion to their ownership interests.

C. Women, minority or individual owners who the applicant claims to have an ownership interest in the applicant's business as evidenced by securities must hold the securities directly or in a trust described in subsection I of this section.

D. Contribution of Capital or Expertise.

1. Contribution of capital and/or expertise by women, minority or individual owners to acquire their ownership interest shall be real and substantial and be in proportion to the interest(s) acquired.
2. Insufficient contributions shall include, but shall not be limited to promises to contribute capital or expertise in the future, a note or notes payable to the business or its owners who are not themselves women, minority or individual owners, or the mere participation as an employee.

E. In a sole proprietorship, the woman, minority or individual applying for certification must own 100% of the business and its assets.

F. Corporations.

1. In a corporate form of organization, women, minority or individual owners must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.
2. Any voting agreements among the shareholders must not dilute the beneficial ownership, the rights, or the influence of the women, minority or individual owners of the stock or classes of stock of the corporation.
3. Women, minority or individual owners shall possess the right to all customary incidents of ownership (e.g., ability to transfer stock, title possession, enter binding agreements, etc.).

G. Partnerships.

1. General Partnership. In a general partnership, women, minority or individual owners must own at least 51% of the partnership interests.
2. Limited Partnership
 - a. In a limited partnership, the women, minority or individual owners who are general partners must own at least 51% of the general partnership interest and exert at least 51% of the control among general partners. The women, minority or individual owners who are general partners must receive at least 51% of the profits and benefits, including tax credits, deductions and postponements distributed or allocable to the general partner.
 - b. In addition, the women, minority or individual owners who are limited partners must own at least 51% of the limited partnership interests and receive at least 51% of the profits and benefits, including tax credits, deductions and postponements distributed or allocable to the limited partners.

H. Limited Liability Companies.

1. In a limited liability company, women, minority, or individual owners must own at least 51% of membership interests, and have at least 51% of the management and control among the members.
2. The women, minority or individual owners must also participate in all risks and profits of the organization at a rate commensurate with their membership interests.

I. Trusts. In order to be counted as owned by women, minority or individual owners, securities held in a trust must meet the following requirements, as applicable:

1. Irrevocable trusts. The beneficial owner of securities held in an irrevocable trust is a woman, minority individual or natural person who is not a minor, and all the trustees are women, minority individuals or natural persons, provided that, a financial institution may act as trustee.

2. Revocable trusts. The beneficial owner of securities held in a revocable trust is a woman, minority individual or natural person who is not a minor, all the grantors are women, minority individuals or natural persons and all the trustees are women, minority individuals, or natural persons provided that, a financial institution may act as trustee.

3. ESOPs. Securities owned by women, minority individuals or natural persons who are participants in an employee stock ownership plan qualified under Section 401 of the Internal Revenue Code, 1986, as amended, and held in a trust where all or at least 51% or more of the trustees are women, minority individuals or natural persons, provided that, a financial institution may act as trustee.

4. Other requirements. Businesses whose securities are owned in whole or part in a trust are not thereby exempt from the other requirements of this chapter.

J. Joint Venture. In a joint venture, the women, minority or individual owners must own at least 51% of the business venture, exert at least 51% of the control of the venture, and have made at least 51% of the total investment.

7VAC10-21-220. Control.

The applicant must show evidence that the women, minority or individual owners have control of the business. The following factors will be examined in determining who controls an applicant's business:

A. Governance

1. The organizational and governing documents of an applicant (e.g., Limited Liability Company Operating Agreements, Partnership Agreements, or Articles of Incorporation and By-laws) must not contain any provision, which restricts the ability of the women, minority or individual owners from exercising managerial control and operational authority of the business.

2. In reviewing governance documents and issues, special attention shall be given to:

a. The composition of the business's governing body (e.g., board of directors or management committee);

b. The functioning of the governing body;

c. The content of shareholder's agreements, bylaws, or state incorporation statutes, and the extent to which such agreements, bylaw(s), or statutes affect the ability of the women, minority or individual owners to direct the management and policy of the business; and

d. In a business seeking certification as a women- or minority-owned business, a woman or minority owner must hold the highest executive officer position in the company by whatever title.

B. Operation and Management

1. The woman, minority or individual owner(s) must possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day decisions as well as major decisions on matters of management, policy and operations. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the women, minority, or individual business owner(s).
2. A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the women, minority or individual employee-owner has management responsibilities and capabilities.
3. In the event that the actual management of the business is contracted or carried out by individuals other than the women, minority or individual owner(s), those persons who have the ultimate power and expertise to hire and fire the managers can, for this purpose, be considered as controlling the business.
4. The applicants must show evidence that the women, minority, or individual owner(s) have operational authority and managerial control of the applicant. In evaluating this evidence, the following factors will be considered:
 - a. Operational Authority. For purposes of this section, "Operational Authority" means the extent to which the women, minority or individual owner(s) actually operate the day-to-day business. Assessments of operational control will rest upon the peculiarities of the industry of which the business is a part. In order to ascertain the level of operational control of the women, minority or individual owner(s), the following will be considered:
 - (1) Experience. The women, minority, or individual owner(s) shall have education, demonstrable working knowledge and/or experience in the area of specialty or industry claimed in the certification application.
 - (2) Responsibility for Decision-Making. The women, minority or individual owner(s) shall be able to demonstrate his or her role in making basic decisions pertaining to the daily operation of the business.
 - (3) Technical Competence. The women, minority or individual owner(s) shall have technical competence in the industry or specialty of the applicant business and/or a working knowledge of the technical requirements of the business sufficient enough to critically evaluate the work of subordinates.
 - b. Managerial Control. For purposes of this section, "Managerial Control" is the demonstrated ability to make independent and unilateral business decisions necessary to guide the future and destiny of the business. Managerial control may be demonstrated in a number of ways. For women, minority or individual owner(s) to demonstrate the extent of his or her or their managerial control, the Department will consider the following (not intended to be all inclusive) areas of routine business activity:
 - (1) The women, minority or individual owner(s) must produce documents that clearly indicate his or her control of basic business functions, e.g., authority to sign payroll checks and letters of credit, signature responsibility for insurance and/or bonds, authority to negotiate and execute contracts and financial services.

(2) Agreements for support services that do not impair the women, minority or individual owner(s)'s control of the company are permitted as long as the owner's power to manage the company is not restricted or impaired as determined by the Department in its sole administrative discretion.

C. Independence

1. Performance

- a. The women, minority or individual owner(s)'s expertise must be indispensable to the business's potential success.
- b. The women, minority or individual owner(s) shall have the ability to perform in the applicant's area of specialty/expertise without substantial reliance upon finances and resources (e.g., equipment, automobiles, facilities, etc.) of businesses that are not eligible for certification.

2. Test of Independence. Recognition of the applicant as a separate and distinct entity by governmental taxing authorities shall not be a sole determinant of any applicant's assertions of independence. Test criteria include, but are not be limited to the following:

- a. Applicant's use of employees, equipment, expertise, facilities, etc., "shared" with or obtained from a company not eligible for certification.
- b. Financial transactions, such as accounts receivable, accounts payable, billing, order processing, are performed by a business that is not eligible for certification.
- c. Applicant's relationship with a business that is not eligible for certification that involves any long-term contract or lease agreements.
- d. Applicant's status as a party to any contract or lease agreement on terms at variance with industry standards or prudent business practices.
- e. Interlocking ownership of the applicant and business not eligible for certification in the same industry.
- f. Common directors/officers/members between the applicant and a business not eligible for certification.
- g. Receipt by the business not eligible for certification of financial benefits (i.e. profits, wages, etc.) that are not commensurate with the duties performed.
- h. Dependence on licenses, permits and/or insurance held by a business not eligible for certification in order to operate; failure to possess all legal requirements necessary to legally conduct business.

3. An agent, broker, dealer, or manufacturer's representative, unless it is the standard for the industry, generally does not qualify for certification.

4. A business that adds no material value or does not perform a commercially useful function in the provision of the products or services being supplied or has no ownership, financial responsibility, legal liability, or does not possess or handle the item being procured with its own employees, equipment, or facilities generally does not qualify for certification, unless the business structure is the standard in the industry.

7VAC10-21-230. Certifying Franchises.

A business operating under a franchise or license agreement may be certified if it meets the eligibility requirements and:

1. The franchise agreement between the franchisor and the franchisee seeking certification must not contain any provision which unreasonably restricts the ability of the women, minority or individual owner(s) from exercising managerial control and operational authority of the business.
2. In reviewing the franchise agreement, special attention shall be given to circumstances which, for certification purposes, shall be considered as restricting control and authority of the women, minority or individual owner(s). These include but are not limited to:
 - a. Termination of the franchise agreement by the franchisor without cause;
 - b. Lack of ownership of receivables by the franchisee;
 - c. Exclusive ownership of account receivables and/or contracts by the franchisor;
 - d. Restrictions on the sale of the business below market value;
 - e. Terms and conditions not related to the brand or systems can be altered without franchisee's notification and/or approval;
 - f. Contracts are prepared and approved by the franchisor;
 - g. Management decisions cannot be made independently by the franchisee;
 - h. No financial risk is borne by the franchisee;
 - i. Hiring and firing decisions cannot be made independently by the franchisee;
 - or
 - j. Equity interest in the franchise is owned by the franchisor.
3. Where there are inconsistencies between the standards and procedures in this section and other sections of regulations, this section will prevail.

Part IV

Certification and Recertification Procedures

7VAC10-21-300. General Provisions.

A. Applications for certification or recertification and other forms are available from and should be submitted to the Virginia Department of Minority Business Enterprise at its principal place of business or through the department's website if available.

B. A business may withdraw its application for certification or recertification, without prejudice, at any time prior to the department's determination. The request to withdraw the application must be in writing and addressed to the director.

C. The department shall maintain a list of all certified businesses in a form accessible to the public. This list shall be used as a source to assist governmental agencies,

individuals, corporations, and prime contractors in identifying and utilizing certified businesses. This list shall be updated and published on a consistent basis.

D. An application for certification or recertification may be administratively closed or placed in inactive status by the department when:

1. The applicant has submitted insufficient information or failed to submit information in response to a written request for information by the department;
2. The applicant has voluntarily withdrawn its application; or
3. The business has been closed or is no longer operating.

7VAC10-21-310. Procedures for initial certification of businesses previously certified by other qualifying local, state, private sector, or federal certification programs.

A. A Virginia-based business, which has been certified as a small, women- or minority-owned business by a local, state, private sector or federal certification program determined by the department pursuant to Part V of this chapter to meet the minimum eligibility, ownership and control requirements, shall be certified as a small, women- or minority-owned business in Virginia, without additional paperwork or fee, upon presentation to the department of documentation that the business has received such certification, the certification has not expired and ownership and control of the applicant business remains unchanged since the certification was granted.

B. A business that is not based in Virginia, which has been certified as a small, women- or minority-owned business by a local, state, private sector or federal certification program determined by the department pursuant to Part V of this chapter to meet the minimum eligibility, ownership and control requirements, shall be certified as a small, women- or minority-owned business in Virginia, without additional paperwork or fee, upon presentation to the department of documentation that it has received such certification, the certification has not expired and ownership and control of the applicant business remains unchanged since the certification was granted only after the department determines that such certification would be available to Virginia-based businesses in the state in which the business is incorporated or has its principal place of business.

C. A business certified by the department under this section shall be certified for a period of three (3) years, unless:

1. The certification is revoked by the department or the program issuing the original certification;
2. The business is no longer in business; or
3. The business is no longer eligible as a small, women- or minority-owned business.

D. A business certified under this section is responsible for notifying the department of any change in legal structure, ownership, control, management, or status of the business or its certification within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

E. It shall be the responsibility of the certified business to notify the department of any change of name and/or address and/or contact information and to keep the

department informed of their current address and/or contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification. The department shall not be liable or responsible if a certified business fails to receive notices, communications and/or correspondence based upon the certified business' failure to notify the department of any change of address and/or to provide correct address and/or contact information.

7VAC10-21-320. Procedures for initial certification of businesses not previously certified by other qualifying local, state, private sector, or federal certification programs.

A. Any business that meets the criteria for certification may file an official application with the department.

B. The application will be reviewed initially for completeness. The department may conduct an on-site visit of the business to obtain or clarify any information, which on-site visit may be scheduled or unannounced.

C. The department may request the applicant to provide additional information or documentation to provide clarification and substantiation of certain criteria or to resolve any ambiguities or inconsistencies in an application.

D. The department may impose a time limit of not less than 30 calendar days in which the applicant must provide the requested information. A reasonable extension may be given by the department for good cause shown by the applicant. Requests for time extensions must be made to the department in writing, and should specify the length of time for which the extension is being requested, and the reasons for the request. Failure to provide such information or documentation shall render the application administratively closed.

E. After reviewing the application, the department shall issue either a notice of certification or a notice of intent to deny certification stating the reasons for denial and offering the applicant the opportunity for an informal hearing pursuant to the Administrative Process Act, §2.2-4019 of the Code of Virginia.

F. A business certified by the department under this section shall be certified for a period of three (3) years, unless the certification is revoked before the end of the three (3) year period, the business is no longer in business or is no longer eligible as a small, women- or minority-owned business.

G. The applicant shall be responsible for notifying the department immediately of any change in legal structure, ownership, control, management, or status of the business within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

H. It shall be the responsibility of the applicant and/or the certified business to notify the department of any change of name and/or address and/or contact information and to keep the department informed of their current address and/or contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so within 30 calendar days of such change may be grounds for revocation of certification. The department shall not be liable or

responsible if a certified business fails to receive notices, communications and/or correspondence based upon the certified business' failure to notify the department of any change of address and/or to provide correct address and/or contact information.

7VAC10-21-330. Procedures for renewal of certification or recertification.

A. To maintain its certification status, a certified business must apply to renew its certification prior to the end of the three (3) year certification period using the forms and procedures specified by the department.

B. The certification of a business that fails to apply for renewal or recertification prior to the end of the three (3) year certification period shall terminate automatically on the expiration of the certification.

C. The department shall notify the business of the pending expiration of its certification at least 60 calendar days prior to the end of the three (3) year certification period.

Part V

Evaluation of Local, State, Private Sector and Federal Certification Programs

7VAC10-21-400. Department initiated evaluation.

The department may at its discretion evaluate any local, state, private sector or federal certification program to determine whether it meets the minimum eligibility, ownership and control requirements for certification of small, women- and minority-owned businesses as set forth in this chapter.

7VAC10-21-410. Application for evaluation by business or program.

The department shall evaluate any such program upon the application (on a form or forms provided by the department for such evaluation) by an individual business, or a representative of the certification program.

7VAC10-21-420. Standards for evaluating other certification programs.

In conducting its evaluation of other certification programs, the department will determine:

1. Whether the minimum eligibility, ownership, and control requirements for certification are equivalent to or stricter than those set forth in this chapter;
2. Whether the program provides for a process for reviewing applications for certification that requires adequate documentation that the applicant meets the standards for certification;
3. Whether the program has a fair process for reviewing the application for certification (that may include an on-site visit); and
4. Whether the program provides an opportunity for an applicant to appeal a denial of certification.

7VAC10-21-430. Department to maintain list of other certification programs.

The department shall maintain and make available on its website and in print form a list of all local, state, private sector and federal certification programs that it has determined meet the minimum eligibility, ownership and control requirements for certification set forth in this chapter.

Part VI

Denial of Certification or Revocation of Certification

7VAC10-21-500. Denial of certification.

The department may deny an application for certification or recertification for any of the following reasons:

1. The department determines that the applicant fails to meet the eligibility, ownership, or control standards for certification;
2. The applicant fails to furnish the department with requested information within the allotted time; or
3. The applicant knowingly provides false or misleading information to the department.

7VAC10-21-510. Notice of Denial.

The department shall notify the applicant of the denial of its application for certification or recertification in writing no later than 15 days from the date of the decision by the department. The notice shall state the reasons for the denial of certification or recertification and offer the applicant the opportunity to appeal the decision as provided in the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

7VAC10-21-520. Criteria for revocation of certification.

The department may revoke the certification of a business that it finds no longer qualifies as a small, women- or minority-owned business under §2.2-1401 of the Code of Virginia.

Grounds for revocation of certification may include the following:

1. The organization, structure, management or control of the certified women- or minority-owned business has changed to the extent that it no longer satisfies the requirement of ownership, control and active management of the business by women or minority individuals.
2. The number of employees or revenues exceeds the requirements for certification of a small business or the small business no longer satisfies the requirements to be independently owned and operated.

3. The business fails to submit the required documentation or to comply with a reasonable request from the department for records or information within the allotted time.
4. The business knowingly provides false or misleading information in support of its initial application or its application for recertification or in response to the department's request for records or information.
5. The business is based in a state that deny like certifications to Virginia-based small, women- or minority-owned businesses or that provide a preference for small, women- or minority-owned businesses that is not available to Virginia-based businesses.

7VAC10-21-530. Revocation procedure.

A. Initiation of the revocation process.

1. The department may, at the request of any state agency or at its own discretion, examine any certified business to verify that it continues to meet the applicable eligibility requirements for certification as a small, woman- or minority-owned business.
2. Any individual or firm who believes that a business certified by the department does not qualify under the standards of eligibility for certification may request that the department undertake a review to verify that the certified business continues to meet the eligibility requirements for certification. Such requests must be written and signed and must contain specific identification of the affected business, and the basis for the belief that it does not meet the eligibility standards. After reviewing the request, the department shall determine whether to conduct a review of the business. The department's decision may not be appealed by the party seeking such verification. Written requests for verification of a certified business' continued eligibility for certification should be sent to the Virginia Department of Minority Business Enterprise at its principal place of business.

B. Review procedure.

1. If the department determines to conduct a review of a business' certification, the department shall notify the business, in writing, that the department is reviewing its certification, explaining the basis for its decision to conduct a review.
2. The department may request records or other documentation from the business, may conduct an on-site visit of the business facilities, and may question other parties during its review.
3. The department may impose a time limit of not less than 15 days in which the business must respond to a request for records or other documentation. A reasonable extension may be given by the department for good cause shown by the business. Requests for time extensions should be made in writing to the department and should specify the length of time for which the extension is being requested and the reason for the request. If the business fails to provide the information in the time requested, the department shall issue a notice of intent to revoke the certification.

4. Upon completion of the review, a written report shall be prepared which shall include:

- a. A statement of the facts leading to the review;
- b. A description of the process followed in the review;
- c. The findings of the review; and
- d. A conclusion that contains a recommendation for disposition of the matter.

C. Notice of intent to revoke certification.

1. If the department determines that the business does not continue to qualify as a small, women- or minority-owned business, it shall issue a notice of intent to revoke the business' certification stating the reasons for revocation, providing information compiled in the course of the investigation, requesting a written response from the business, and offering the business the opportunity for an informal hearing pursuant to the requirements of §2.2-4019 of the Administrative Process Act.

2. The business shall have 15 days from the date of the department's notification to submit a written request for an informal hearing.

3. If no request for an informal hearing is made, the department shall issue a final notice of revocation stating the factual and legal grounds therefore and notifying the business of its appeal rights under Article 3 (§2.2-4018 et seq.) of the Administrative Process Act.

4. The department shall send a copy of the notice of intent to revoke certification and a copy of the final notice of revocation of certification to the affected business and publish such information to interested agencies or departments.

7VAC10-21-540. Re-application.

A business whose application for certification has been denied may reapply for the same category of certification 12 months after the date on which the business receives the notice of denial, if no appeal is filed, or 12 months after the appeal is exhausted. An applicant denied certification as a women- or minority-owned business may reapply for certification as a small business without delay, if otherwise eligible.

The applicant may request a waiver of the 12-month reapplication period from the department director by submitting a written request for reconsideration and providing a reasonable basis for the waiver. The director or his designee, in his or her discretion, shall render a final decision regarding the request for reconsideration and waiver within 30 days, which determination shall not constitute a case decision subject to appeal.

A business whose certification has been revoked may not reapply for certification in the same classification.

Part VII

Procedures for Appeal of Denial of Certification or Revocation of Certification

7VAC10-21-600. Appeals from a denial of certification or revocation of certification.

An applicant shall have the right to appeal a denial of certification and a certified business shall have the right to appeal revocation of certification as provided in the Article 3 (§2.2-4018 et seq.) of the Administrative Process Act. The appeal process for denial of certification and revocation of certification shall be the same.

7VAC10-21-610. Judicial review.

If an applicant desires further review after exhausting its administrative remedies, the department shall inform the applicant of the right to pursue judicial review pursuant to §§2.2-4026 through 2.2-4030 of the Administrative Process Act.